There is no complaint by either side on the quantum awarded by the learned judge to the 1st respondent on its counterclaim under the provisions of sections 15 and 18 of the Hire-Purchase Act which he did in the sum of $17,772.24 as the 2nd respondent as owner had assigned its rights under the hire-purchase agreement to the 1st respondent by an assignment made on November 20, 1969.

The appellant complains that the learned judge failed to consider or give any weight to the evidence of PW2, a fitter in the employ of the 1st respondent, who was called to give evidence on his behalf and who had prepared the report (P6) dated May 13, 1969 on the loader, and the 1st respondent in turn repines to the effect that the learned judge erred in law and in fact in holding it was in breach of the warranty contained in the written guarantee of August 14, 1968 and in failing to give any weight to the evidence in support of its allegation that the defects in question were due to fair wear and tear and failure on the part of the appellant to properly maintain the machine. The learned judge as we have said arrived at a finding of fact that there was a breach of warranty on the part of the 1st respondent and in doing so obviously accepted the evidence of PW2 and his report (P6), and we must point out that Tan Jok Sing (DW2), the chief fitter of the 1st respondent and immediate superior of PW2, in cross-examination agreed with the report of (P6) made by PW2.

On the 1st respondent's counterclaim in the sum of $1,770.31 for work done and spare parts supplied to the appellant at his request, the learned judge only awarded $202.10 and the 1st respondent submits that the learned judge erred in law and in fact in holding that the counterclaim in this respect was covered by the warranty contained in the written guarantee of August 14, 1968. The learned judge found that all the delivery orders and invoices put in except those relating to two pieces of cable assembly and the delivery charges therefor totalling $202.10 related to supply during the six-month warranty period contained in the written guarantee of August 14, 1968. The appellant in his letter of February 7, 1969 to the 1st respondent specifically pointed out that this complaint was made during the 'guarantee period' and added that he did not expect to hear later that he had made the complaint after that period. The learned judge further found as a fact that the defective parts for which materials were supplied by way of replacement during the period of warranty had not been sufficiently proved by the 1st respondent to have been the consequence of negligence or wear and tear and he went on to find on the evidence, and in particular accepting the evidence adduced for the appellant and principally that of PW2 and his report (P6), that the defects were in fact due to the long period of storage of the machine and that they came within the warranty and the replacements had therefore to be made *gratis*. There is no reason whatsoever to dissent from the learned judge's finding of fact on this aspect which is intricately related to his other findings we have already discussed.

In the result, we dismiss both the appeal and cross-appeal with costs. The deposit lodged in court by way of security for costs will be paid out to the respondents.

It is a matter of some regret that we feel impelled to conclude this judgment by ventilating a two-fold complaint. First, the order of August 19, 1978 drawn up to give effect to the decision of the learned judge is defective and inaccurate. After an extensive hearing in open court the order is stated to have been made in chambers (!), states that the action came on for trial in February 1973 when it actually commenced in November 1971 and does not state or properly reflect the order for costs made by the learned judge in respect of the claim and counterclaim. For this the solicitors for the 1st respondent frankly admit liability. And second, the record of appeal is badly prepared and leaves much to be desired. The indexes to both volumes of the record have hardly been of any assistance for the purpose they were intended, there is no indication in the record to assist in tracing the evidence of the several witnesses through the various stages of their examination, the oral submissions of counsel in the notes of evidence are hardly intelligible or informative as they refer to written submissions put in at the trial which are not before us, a considerable part of the massive volume of exhibits is wellnigh illegible and the index thereto gives no appropriate reference to the dates of the several documents, and even a new index to that volume tendered at the outset of the hearing in this appeal did not improve matters. Reliance on such a record of necessity entails great inconvenience and quite unnecessarily a more intensive and exhausting task than a land office search in a system of unregistered titles. The appellant's solicitors who prepared the record are of course primarily responsible on this count. The fact that culpability for this deplorable state of affairs is equally shared by both sides does not in any way detract from the gravamen of the stricture anent the callous and cavalier approach to the drafting and preparation of vital documentation.

Appeal and cross-appeal dismissed.

Solicitors: *Jayadeva & Kamal; Lewis & Co.; Skrine & Co.*

SUPERINTENDENT OF PULAU JEREJAK & ANOR. v. WONG CHENG HO

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo), Wan Suleiman, Chang Min Tat & Ibrahim Manan F.JJ.) May 14 & August 23, 1979]

[Kuala Lumpur — Federal Court Criminal Appeal No. 25 of 1978]

Criminal Law and Procedure — Order of detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1979 — Whether can be made against a juvenile — Juvenile Courts Act, 1947, ss. 3, 35 and 36 — Emergency (Public Order and Prevention of Crime) Ordinance, 1969, s. 4(1).

The Minister of Home Affairs had made an order under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, ordering the respondent, who was a juvenile, to be detained for two years. On application to the High Court, the respondent was set free, as the learned judge held that section 4(1) of the Ordinance did not apply to a juvenile and that a juvenile could only be detained without trial in accordance with the Juvenile Courts Act, 1947. The appellants appealed.

Held, (Suffian L.P., Chang Min Tat and Ibrahim Manan, F.JJ.; Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J. dissenting): the learned judge was wrong in holding that a juvenile can be detained without trial only under the Juvenile Courts Act and not under the Emergency (Public Order and Prevention of Crime) Ordinance. A juvenile may be detained without trial under section 36 of the Juvenile Courts Act or under the Emergency (Public Order and Prevention of Crime) Ordinance according to the circumstances, and in the circumstances of this case, the respondent's detention under the Ordinance was lawful.

Case referred to:-

(1) *Vera Cruz* (1884) 10 App. Cas. 59, 68.

The following case was also referred to in argument: *Jayanathan* v. *Public Prosecutor* [1973] 2 M.L.J. 68.

HIGH COURT.

K. Pasupathy for the applicant.

Mohamed Shafie bin Mohamed Abdullah (Deputy Public Prosecutor) for the respondents.

Cur. Adv. Vult.

Syed Othman F.J.: The applicant seeks the issue of a writ of *habeas corpus* against the respondents to produce the applicant and to show cause why the applicant should not be released from detention. The application is accompanied by the mother's affidavit. The facts may be put briefly thus: The applicant was born in Pahang on June 6, 1961. On November 21, 1976 he went to Singapore to seek employment and was employed by various shipbuilding firms. He did not have a work permit but managed to get his passport endorsed for entry fortnightly. He returned to Bentong, Pahang on February 4, 1978. On February 6, 1978 he was arrested and detained at the police station, Bentong for 2 months. The Minister (2nd respondent) by an order dated April 6, 1978 under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 (hereafter referred to as the Emergency Ordinance) ordered the applicant to be detained for 2 years.

It is accepted that he was a minor when the order was issued and is still a minor.

The order issued by the Minister rendered into English reads as follows:

"Whereas I am satisfied that it is necessary to make an order on the person named hereunder with a view to preventing him from acting in a manner prejudicial to public order or for the suppression of violence or the prevention of crimes involving violence.

Name	*Identity Card No.*
Wong Chen Ho	6174860.

Now therefore in exercise of the powers conferred on me by section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 I direct by this order that the said person be detained for two years commencing 6th April, 1978 at Pusat Pemulihan Akhlak, Pulau Jerejak or any other places directed by me from time to time."

In an affidavit by a Police Inspector who investigated the case, paragraphs 4 and 5 read:

"4. The Subject was detained under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 for the following grounds:

(a) Subject was an active member of Siew Wah Kee Secret Society which operated and is still operating in the area of Kampong Chamang, Bentong — Pahang, since 1975. The activities of the said Secret Society has threatened public order and peace in the said area.

(b) Subject was also involved in several assaults; criminal intimidation; gang clashes one of which resulted in a murder of a 14 year old boy; and several thefts.

5. The criminal activities of the said subject as enumerated in paragraph 4 above took place prior to 21st day of November, 1976."

The argument of the applicant's side is that the provisions of the Emergency Ordinance do not apply to a juvenile as the Juvenile Courts Act (Act 90) provides for the detention of a juvenile or young person who must be treated differently from adults. It is also argued that the Emergency Ordinance being enacted under Article 150(2) of the Federal Constitution may be inconsistent with the Constitution, but not with other laws, as clause (6) of the Article merely provides in effect that no provision of any Ordinance under the Article shall be invoked on the ground of any inconsistency with any provision of the Constitution. The reference here is to the Constitution only. I do not think it is necessary for me to go into other arguments.

The respondents' side has urged that a juvenile or young person has no inherent right to be treated differently from an adult; the word "person" in section 4(1) of the Emergency Ordinance should include a juvenile or young person; the Emergency Ordinance provides for preventive detention, while sections 35 and 36 of the Juvenile Courts Act are merely for the purpose of dealing with a juvenile in need of care and protection; and, it is open to the Minister in the exercise of his discretion to detain a juvenile or young person under the Emergency Ordinance.

On the affidavits and arguments, the main question to be determined in the matter is whether the Emergency Ordinance applies to a juvenile or young person.

Section 3 of the Juvenile Courts Act reads:

"3. Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence, no juvenile when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act."

(The proviso does not apply.)

The Interpretation Act, 1967 applies to the Juvenile Courts Act by reason of its having been revised. See section 2(1). The meaning of "written law" as given by section 3 of the Interpretation Act is very comprehensive. It even includes the Federal Constitution, the State Constitutions and subsidiary legislations made thereunder. The Emergency Ordinance having been made under Article 150(2) is in effect a subsidiary legislation of the Federal Constitution.

Having regard to this and considering the phrase "Notwithstanding ... any written law" appearing in section 3 of the Juvenile Courts Act and its implications as indicated above, I am afraid I cannot see that the Emergency Ordinance must be taken as overriding, or even, one may be tempted to say, co-existing with the Juvenile Courts Act. No doubt section 3, on the face of it, relates to arrest, detention or trial for an alleged offence and the Emergency Ordinance relates to a different detention in that he is not charged with any offence. But sections 36 and 37 of the Act deal with a juvenile or young person who is not charged with any offence; and section 36, when he is in need

of care or protection. These provisions, as pointed out by Encik Pasupathy for the applicant, are the first enactment of law providing for preventive detention or detention without trial. The Juvenile Court in section 36 after satisfying itself is empowered to order him to be sent to an approved school, place or home. The words "sent to an approved school, etc. ..." to my mind, are merely an euphemism for detention. See, e.g. section 28. Before he can be brought to the Juvenile Court for the purpose, there must be some form of arrest or transitional detention. As far as I can see the power to make such arrest or detention in the Juvenile Courts Act is only contained in section 3. Sections 36 and 37 of the Act must therefore be considered to be related to this section.

The word "person" in the Emergency Ordinance, I agree, on the face of it, must be taken to include a juvenile or young person or even a child. But I cannot see any language in the Emergency Ordinance which says in any specific term that the Minister may deal with a juvenile or young person to the exclusion of the provisions of the Juvenile Courts Act. Even if there is such language in the Emergency Ordinance, I am inclined to think that it would conflict with the expressed intention of Parliament that section 3 of the Juvenile Courts Act, and consequentially the related provisions, particularly section 36, are to stand over any written law.

The applicant was detained because he was an active member of a secret society as stated by the investigating officer. This very reason does in fact show that he was in need of care or protection as envisaged by section 36(1)(a) of the Juvenile Courts Act. More so when action against him was taken at instance of the police, who are empowered to act under the section. If they could satisfy the Minister so that he could be detained, I see no reason why they could not satisfy the Juvenile Court. To act against him differently is to give the reason a different colour. Further, I cannot see that Pulau Jerejak, meant for adults, is a better institution for a juvenile or young person than an approved school, place or home run by the Minister of Social Welfare. Any parent would rather see that his child be sent to an approved school or home than an adult institution. It may be said that by sending him to an approved school or home he may infect other juveniles or young persons. But I think he will be worse off if he is mixed with adults, particularly those with violent tendencies. This will defeat the whole exercise intended by the provisions of the Juvenile Courts Act in that in dealing with juveniles or young persons they are to be separated from adults.

I am of the view that by the unequivocal expression of intent in the provisions of the Juvenile Courts Act, Parliament is in effect giving the youths of this country a charter. Considering this, if it was intended to create any exception in dealing with them, in the sense of arrest, detention or trial under a different situation, particularly detention in an institution other than that mentioned in the Act, the provision of law must be embodied in the Act itself. As an example, the existing proviso to section 3 in the Act does embody an exception in regard to trial.

On the grounds foregoing, I find that the Emergency Ordinance does not apply to a juvenile or young person, and consequently the detention order under the Emergency Ordinance is improper. I hereby order the applicant to be produced before the court by Monday August 28 for his release. It would be a matter for the authority concerned to deal with him, if necessary, under the Juvenile Courts Act.

From the above judgment the respondents appealed to the Federal Court.

FEDERAL COURT.

Mohamad Shafie bin Abdullah (Deputy Public Prosecutor) for the appellants.

K. Pasupathy for the respondent.

Suffian L.P. (delivering the majority judgment, also for Chang Min Tat and Ibrahim Manan F.JJ.): This is an appeal from the order of the High Court setting the respondent free.

On April 6, 1978, the Minister of Home Affairs, the second appellant before us, made an order under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 (("the Ordinance"), published as P.U.(A) 187/69, ordering the respondent to be detained for two years.

At the material time the respondent was a juvenile.

The learned judge set him free on the ground that section 4(1) of the Ordinance does not apply to a juvenile and that a juvenile may be detained without trial only in accordance with the Juvenile Courts Act, 1947 (Revised — 1970) ("the Act").

Thus the issue here is whether a juvenile may be detained without trial in accordance with the Ordinance or only in accordance with the Act.

The English translation of the order made by the Minister reads as follows:

"Whereas I am satisfied that it is necessary to make an order on the person named hereunder with a view to preventing him from acting in a manner prejudicial to public order or for the suppression of violence or the prevention of crimes involving violence:

Name	*Identity Card No.*
Wong Chen Ho	6174860

Now therefore in exercise of the powers conferred on me by section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 I direct by this order that the said person be detained for two years commencing April 6, 1978 at Pusat Pemulihan Akhlak, Pulau Jerejak or any other places directed by me from time to time."

Police Inspector Heng Tian Chai who investigated the case, in an affidavit filed in answer to the respondent's application that he be set at liberty made under Chapter XXXVI of the Criminal Procedure Code, said:

"4. The [respondent] was detained under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 for the following grounds:

(a) [He] was an active member of Siew Wah Kee Secret Society which operated and is still operating in the area of Kampong Chamang, Bentong — Pahang, since 1975. The activities of the said Secret Society have threatened public order and peace in the said area.

(b) [He] was also involved in several assaults; criminal intimidation; gang clashes one of which resulted in a murder of a 14-year old boy; and several thefts.

5. [His] criminal activities .... enumerated in paragraph 4 above took place prior to November 21, 1976."

Section 4(1) of the Ordinance provides:—

"If the Minister is satisfied that with a view to preventing any person acting in any manner prejudicial to public order it is necessary that that person should be detained, or, that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order ... directing that that person be detained for any period not exceeding two years."

We were also referred to sections 3, 35 and 36 of the Act.

Section 3 provides:—

"3. Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence, no juvenile when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act:

Provided that a charge made jointly against a juvenile and a person who has attained the age of eighteen years shall be heard by a court other than a Juvenile Court and that other court may, in addition to any other powers exercisable by it under any other law for the time being in force, exercise in respect of any such juvenile all the powers which may be exercised under this Act by a Juvenile Court...."

Section 35(1) provides:—

"35. (1) For the purposes of this Act, a child or young person in need of care or protection means a person who is —

(a) a child or young person who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control; or

(b) ....

requires care and protection."

Section 36(1) provides:—

"36.(1) If a Juvenile Court is satisfied that any child or young person brought before the court under this section by a social welfare officer, a probation officer, any member of the police force, or authorized person is in need of care or protection, the court may either —

(a) order him to be sent for a period of three years from the date of the order or until he shall have attained the age of eighteen years whichever shall be the longer to an approved school or to any place or home approved for the purpose by the Minister:

....

(b) commit him for a period of three years from the date of the order or until he shall have attained the age of eighteen years whichever shall be the longer to the care of any fit person, whether a relative or not, who is willing to undertake the care of him;

(c) order his parent or guardian to enter into a bond to exercise proper care and guardianship for a period of three years from the date of the order or until he shall have attained the age of eighteen years, whichever shall be the longer; or

(d) without making any other order, or in addition to making an order under paragraph (b) or (c), make an order placing him, for a specified period not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purposes by the court; and any such order may require him to reside for a period not exceeding twelve months in a probation hostel."

We are of the opinion that the learned judge was erroneous in holding that a juvenile can be detained without trial only under the Act and not under the Ordinance. In our judgment a juvenile may be detained without trial under either section 36 of the Act or under the Ordinance according to circumstances, and in the circumstances of this particular case the respondent's detention under the Ordinance was lawful.

At one time a juvenile could be arrested, detained and tried simply in accordance with the Criminal Procedure Code, just like any other person. Then the Act was passed effective from January 1, 1949, establishing Juvenile Courts and section 3 thereof is a statutory exception to the old procedure relating to the arrest, detention and trial of a juvenile who is alleged to have committed an offence. The proviso to the section (providing for the trial of a juvenile in the ordinary court where he is jointly charged with an adult) is confirmation of our view that the section is intended to apply only to the detention of a juvenile who is subsequently to be tried, and not to the preventive detention of a juvenile without trial.

The arrangement of the words in succession of "arrest, detention and trial"; and the words "committing any offence" and "when alleged to have committed the offence"; make plain that the section is not intended to provide for detention without trial.

Regulation 3(3) of the Essential (Security Cases) Regulations, 1975, expressly excludes the jurisdiction of the Juvenile Court over juveniles charged with security cases, and so it was argued by Mr. Pasupathy that similarly if it was intended that the Minister should have power to order the preventive detention of a juvenile there should be an express provision in the Ordinance to override the Act. We do not agree, because in our view, as already stated, section 3 applies only to detention followed by trial.

As already stated, a juvenile may be detained without trial either under section 36 of the Act or under the Ordinance — under the Ordinance because section 4(1) thereof is expressed to apply to "any person" without any qualification as to age.

It is open to the Executive to proceed either under the Act or the Ordinance, depending on the circumstances of each case. To proceed under the Act the Executive must satisfy the Juvenile Court that the juvenile is in need of care and protection, i.e. he has no parent or guardian or his parent or guardian is unfit to exercise care and guardianship or has not been exercising proper care and guardianship, and that accordingly the juvenile has either fallen into bad company or is exposed to moral danger or is beyond control.

To proceed under the Ordinance the Minister does not have to satisfy any court — at least in the first instance — as to anything; all he need do is to satisfy himself *bona fide* that it is necessary to detain the juvenile with a view to preventing him from acting in a manner prejudicial to public order or because it is necessary for the suppression of violence or the prevention of crimes involving violence.

The same set of facts may justify an order under the Act or the Ordinance — but not necessarily so.

We think that the responsibility of acting under the Ordinance is graver than that of acting under the Act.

In most cases it is the child or young person who needs protection, in which case it may be supposed that the Executive will proceed under the Act. But these days when discipline has gone by the board and many of the young are in pursuit of instant wealth

it is conceivable that in some cases it is the public that requires protection; in that event it is open to the Executive to proceed not gently under the Act but under the Ordinance.

The fact that in that event the child or young person has perforce to mix with hardened criminals in Pulau Jerejak rather than live in the more salubrious atmosphere of an approved institution affects only the treatment accorded to the subject, not the legality of the power of the Minister. In any event, the Minister has power to segregate juveniles.

On the facts set out in Inspector Heng's affidavit clearly the Minister's order detaining the respondent was lawful.

The appeal is therefore allowed.

We are not, however, asked to set aside the learned trial judge's order and substitute therefor an order confirming the Minister's order — presumably because the respondent has gone back to Singapore.

Lee Hun Hoe C.J. (Borneo) (delivering dissenting judgment, also for Wan Suleiman F.J.): This appeal raises a short but difficult point of construction concerning the detention of a juvenile under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ("the Ordinance"). Briefly, the facts are that respondent was born on June 6, 1961 at Bentong, Pahang. In late 1976 he went to Singapore and worked at various shipbuilding firms. As he did not have a work permit he managed to get his passport endorsed for entry fortnightly. He returned to Bentong on February 4, 1978. Inspector Heng Tian Chai, the investigating officer, stated in his affidavit that on April 6, 1978 the Deputy Minister of Home Affairs, acting under a proper delegation of powers, issued a detention order pursuant to section 4(1) of the Ordinance against respondent for his detention for two years. The grounds for his detention were that:—

(a) He was an active member of the Siew Wah Kee Secret Society which operated and is still operating in the area of Kampong Chamang, Bentong, Pahang, since 1975. The activities of the said secret society have threatened public order and peace in the said area.

(b) He was also involved in several assaults; criminal intimidation; gang clashes, one of which resulted in a murder of a 14-year old boy; and several thefts.

The detention order was served on respondent on April 7, 1978. At the time he was a juvenile. The alleged criminal activities against him occurred prior to 1976.

Section 4(1) of the Ordinance reads:—

"If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years."

Section 3 of the Juvenile Courts Act, 1947 ("the Act") provides:—

"Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence, no juvenile when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act:

Provided that a charge made jointly against a juvenile and a person who has attained the age of eighteen years shall be heard by a court other than a Juvenile Court and that other court may, in addition to any other powers exercisable by it under any other law for the time being in force, exercise in respect of any such child or young person all the powers which may be exercised under this Act. . . ."

Having heard the parties the learned judge held that upon the proper construction a juvenile could be detained without trial only under the Act and not under the Ordinance. Consequently, he granted the application for a habeas corpus and ordered the release of the juvenile from detention. The question is whether the learned judge is right to say that the Ordinance does not apply to a juvenile who can only be detained without trial under the Act. It involves a short point and mainly depends upon the construction of the words "any person" in section 4(1) of the Ordinance in the light of the provisions of the Act, particularly sections 3, 35, 36 and 37. The matter is obviously of some difficulty as it has given rise to much anxiety and to divergence of opinion. My learned brethren considered the learned judge to be wrong. They are of the opinion that a juvenile may be detained without trial under either section 36 of the Act or the Ordinance depending upon particular circumstances. As I find myself supporting the learned judge it is with some hesitation that I venture to disagree with them.

Before the Act, like everyone else, a juvenile could be arrested, detained and tried under the provisions of the Criminal Procedure Code. But, the legislature decided to make a special law for juveniles. So, after the passing of the Act a juvenile must be dealt with in accordance with the provisions of the Act. Some nine years after Malaysia the Act was revised and extended to Sabah but not Sarawak. The Act was effective in West Malaysia on December 1, 1949 in establishing the Juvenile Courts. It is said that section 3 of the Act is merely a statutory exception to the Criminal Procedure Code relating to the arrest, detention and trial of a juvenile who is alleged to have committed an offence. The Criminal Procedure Code is a statute dealing with procedural law relating to criminal matters. Thus, as a matter of procedure after the Act a juvenile must be dealt with in accordance with the provisions of the Act. Perhaps, it is for this reason that the learned judge said that the Act is a charter for juveniles.

A detention order under section 4(1) of the Ordinance is normally made on the basis of certain grave allegations for preventing acts "prejudicial to public order" or "necessary for suppression of violence" or "necessary for the prevention of crimes involving violence". The evidence of such allegations may not be strictly admissible or sufficient to secure a conviction in a court of law. However, the law has, taking into consideration the needs and exigencies of the administration, deemed such evidence sufficient for the subjective decision of the Minister. So, under the Ordinance a person can be detained without being charged with any offence. This is not new. A juvenile may also be detained without being charged with any offence under the Act if he is in need of care and protection (section 36) or he is beyond parental

control (section 37). It is necessary to bear in mind that preventive detention was introduced during the emergency in 1948 and that the Act was operative in 1949. It is preventive detention as long as a person is detained without trial for certain alleged activities. It is still preventive detention no matter where that person is being detained.

It would seem the Act covers the situation set out in the Ordinance. The Act itself indicates the clear intention of Parliament to treat a juvenile differently from an adult by establishing juvenile courts and providing special procedures in dealing with a juvenile. The long title of the Act states in no uncertain terms that intention to provide "for the care and protection" of juveniles. It is a special law. If the Ordinance is looked at alone there can be little doubt that the words "any person" in section 4(1) would include a juvenile. The Ordinance is meant to be applied generally. But, having regard to the Act the proper construction to be given, in my view, to the words "any person" is to exclude a juvenile; otherwise it would be contrary to the fundamental principle of construction expressed in the Latin maxim *generalia specialibus non derogant*. It means general words in a later statute do not repeal an earlier statute dealing with a special subject. The leading case is the *Vera Cruz*[1] in which Lord Selborne stated: —

"Now if anything be certain it is this that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

A juvenile cannot come within the meaning of the words "any person" not because he is not a person but because Parliament has made a special law, the Act, to deal with him. Put in another way, the words "any person" do not bear a restrictive meaning but a juvenile is excluded because there are provisions of a special law enacted by Parliament earlier on to deal with such a person.

The Court's main function in construing a statute is to ascertain the intention of Parliament and to give effect to it. No doubt this is true so far as most statutes are concerned, but, in the case of some statutes, notably those creating crimes, those depriving a subject of liberty and possibly also those imposing taxes, the court must construe them strictly and, in case of doubt, in favour of the subject. In my judgment as the Ordinance seeks to deprive a person of liberty without trial, unless the provisions are clear the construction favourable to a juvenile should be given. This is precisely what the learned judge did when at page 28 of the Appeal Record he observed that:—

"The word 'person' in the Emergency Ordinance, I agree, on the face of it, must be taken to include a juvenile or young person or even a child. But I cannot see any language in the Emergency Ordinance which says in any specific term that the Minister may deal with a juvenile or young person to the exclusion of the provisions of the Juvenile Courts Act. Even if there is such language in the Emergency Ordinance, I am inclined to think that it would conflict with the expressed intention of Parliament that section 3 of the Juvenile Courts Act, and consequentially the related provisions, particularly section 36, are to stand over any written law."

In my view the Ordinance must make clear its intention to remove the right of a juvenile. An example is section 3(3) of the Essential (Security Cases) (Amendment) Regulations, 1975 which expressly provides:—

"3(3) Where a person is accused or charged with a security offence, he shall, regardless of his age, be dealt with and tried in accordance with the provisions of these Regulations and the Juvenile Courts Act, 1947, shall not apply to such person."

The grounds for detention of respondent, if true, would suggest that he is alleged to have committed not one but several offences but he was not charged with those offences either because the evidence to be adduced was inadmissible or because the evidence if adduced would disclose security matters which government does not wish to make public. Whatever may be the reason for not bringing the respondent to trial it cannot be doubted that the very same grounds for detention under the Ordinance could very well justify detention of respondent under the provisions of the Act.

A juvenile may have been alleged to have committed one or more offences. But, it does not necessarily follow that in every case he will be brought to trial. He could be arrested and detained without trial under section 36 or section 37 of the Act. The opening words of section 3(1) of the Act beginning with "Notwithstanding anything contained in any written law . . ." read with sections 35, 36 and 37 clearly indicate the intention of Parliament that in dealing with a juvenile whether there is to be a trial or not only the Act shall apply and "any written law" such as the Criminal Procedure Code and the Ordinance would have to be excluded. The government would not be hampered in any way if action is taken against respondent under section 36 or section 37 of the Act. After all, if it is the intention of Parliament to treat a juvenile in the same manner as an adult it has no need to promulgate a special law in the form of the Act. I cannot see any distinction in the meaning of "preventive detention" just because the place of detention under the Ordinance is different from that under the Act. The object of having a special law in dealing with juveniles is to help them to become respectable and useful citizens. Hence, special places of detention are provided for them. Detaining them in a place such as Pulau Jerejak or elsewhere meant for hardened and habitual criminals or subversive elements would be contrary to the whole spirit of dealing with juveniles in a different and special way under the Act. It is better to detain a juvenile in a place meant for such a person than to detain him in Pulau Jerejak or other place which is meant for undesirable adults to the detriment of the juvenile.

For the reasons given, I would dismiss the appeal.

Suffian L.P.: In accordance with the majority judgment, this appeal is accordingly allowed.

Appeal allowed.

Solicitors: *Pasupathy & Co.*